

Notice
Of
Rulemaking Hearing

FS 05-23-08
DB10 861 -862

Department of Commerce and Insurance
Division of Fire Prevention

There will be a hearing before the Commissioner of Commerce and Insurance or her designee to consider the promulgation of amendments of rules pursuant to T. C. A. §§ 62-32-202, 68-102-113 and 68-120-101. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T. C. A. § 4-5-204, and will take place in the Tennessee Room on the third floor the Snodgrass Tennessee Tower, located at 312 8th Avenue North in Nashville, Tennessee at 9:00 a.m. (Central Time) on the 30th day of July, 2008.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department of Commerce and Insurance to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact Randy Safer, Director of Codes Enforcement for the State Fire Marshal's Office, Department of Commerce and Insurance at 500 James Robertson Parkway, Davy Crockett Tower, 3rd Floor, Nashville, Tennessee 37243, telephone (615) 741-7190.

Substance of Proposed Rules

Chapter 0780-2-2
Codes and Standards

Amendments

Subparagraph (b) of rule 0780-2-2-.01 Adoption by Reference is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (b) ICC International Fire Code, 2006 edition, published by the International Code Council, Inc., 500 New Jersey Avenue Northwest, 6th Floor, Washington, D.C. 20001, and the Life Safety Code (NFPA No. 101-2006), 2006 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101.

Authority: T. C. A. §§ 68-102-113(a) and 68-120-101.

Paragraph (2) of rule 0780-2-2-.04 Conflicts is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (2) In the event of a conflict or inconsistency between either code adopted by reference in rule 0780-2-2-.01 and Chapter 0780-2-1 (Electrical Installations) of the Rules and Regulations of the State of Tennessee, the provisions of Chapter 0780-2-1 (Electrical Installations) shall control.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Chapter 0780-2-3
Review of Construction Plans and Specifications

Amendments

Subparagraph (b) of Paragraph (1) of rule 0780-2-3-.01 Definitions is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (b) Construction means the erection of a new building, an addition to an existing building, a change of occupancy, an alteration that alters the exit arrangement, fire resistive assemblies, or type of construction, or involves the installation of fire suppression or detection systems or fuel-fired equipment. The term “construction” shall not be construed to include excavation or site preparation. When renovation or remodeling occurs in an existing building that does not result in an addition to the building, the existing life safety features that do not meet the requirements for new buildings, but that exceed the requirements for existing buildings, shall not be further diminished.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Subparagraph (d) of Paragraph (1) of rule 0780-2-3-.01 Definitions is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (d) Educational occupancy means the use of a building or structure, or a portion thereof, for educational purposes by six (6) or more persons for more than twelve (12) hours per week, but no more than eight (8) hours in a single day. Educational occupancy includes part-day nursery schools and day care centers licensed by the Department of Human Services or licensed by the Department of Education, and all other schools including kindergarten through twelfth grade. An educational facility is distinguished from assembly occupancy in that the same occupants are regularly present.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Paragraph (1) of rule 0780-2-3-.01 Definitions is amended by adding new subparagraphs (j), (k) and (l) so that, as amended, the new subparagraph shall read:

- (j) Phased construction means the erection of a new structure or facility in different stages on a new site and consisting of a foundation, a shell and a final approval. Phased construction does not include renovations or remodeling of any existing structure or facility.
- (k) Dwelling unit means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- (l) Sleeping unit means a room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Authority: T. C. A. §§ 68-102-113, 68-102-113(a) and 68-120-101.

Paragraph (1) of rule 0780-2-3-.02 Submission of Plans is amended by adding new subparagraph (d) so that, as amended, the new subparagraph shall read:

- (d) Facilities leased by the state located in a jurisdiction of local government that has obtained the exemption authorized by Tenn. Code Ann. § 68-120-101(b)(2).

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Paragraph (3) of rule 0780-2-3-.02 Submission of Plans is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (3) After July 1, 1983, no person shall commence construction of any business occupancy three (3) stories or more in height, or residential occupancy three (3) stories or more in height, excluding 1- and 2-family dwellings having less than twelve (12) sleeping units, less than twelve (12) dwelling units, or less than twelve (12) of a combination of sleeping and dwelling units as provided in Tenn. Code Ann. § 68-120-101(c)(1), until plans and specifications therefor have been submitted to and approved in writing by the Division.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Paragraph (5) of rule 0780-2-3-.02 Submission of Plans is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (5) After July 1, 2001, no person shall commence construction of any two (2) story residential occupancy having twelve (12) sleeping units or more, having twelve (12) dwelling units or more, or having a combination of twelve (12) or more sleeping and dwelling units until plans and specifications therefor have been submitted to and approved in writing by the Division.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Paragraph (7) and Subparagraph (a) of Paragraph (7) of rule 0780-2-3-.02 Submission of Plans are amended by deleting the text of the paragraph and subparagraph in their entirety and substituting instead the following language so that, as amended, the paragraph and subparagraph shall read:

- (7) Notwithstanding the foregoing paragraphs of this rule, any phased construction requiring approval by the Division may be undertaken prior to approval of final plans and specifications if:
 - (a) The Division has received a written request for phased construction approval;

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Paragraph (7) of rule 0780-2-3-.02 Submission of Plans is amended by adding new subparagraph (e) so that, as amended, the new subparagraph shall read:

- (e) NOTE: If construction starts in accordance with paragraph 7(a)-7(d) above, said construction must comply with the minimum standards for fire prevention, fire protection, and building construction safety in effect at the time of the initial submission.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Rule 0780-2-3-.03 Requirements is amended by deleting the text of paragraph (3) in its entirety.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Paragraph (1) of rule 0780-2-3-.04 Fees is amended by deleting the text of the paragraph in its entirety so that, as amended, the paragraph shall read:

- (1) The fee for review of plans and specifications for construction shall be as specified in the following table:

Total Project Construction Cost	Fee
\$0.00 to \$1,000,000.00	\$2.25 per thousand or fraction thereof (\$250.00 minimum)
\$1,000,000.01 or more	\$2,250.00 for the first \$1,000,000.00 plus \$2.00 for each additional thousand or fraction thereof.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Subparagraph (a) of Paragraph (2) of rule 0780-2-3-.04 Fees is amended by deleting the text of the subparagraph in its entirety so that, as amended, the subparagraph shall read:

- (a) in the Division's opinion, the construction cost of a project has been underestimated in the certification submitted pursuant to rule 0780-2-3-.03(3) based on the latest available Building Valuation Data published by the International Code Council (using the 0.88 Regional Cost Modifier for Tennessee); or

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Paragraph (6) of rule 0780-2-3-.05 Approval of Plans is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (6) No approval of, or failure to review, plans, and specifications by the Division shall relieve the owner, developer, contractor, or designing architect or engineer of their respective responsibilities for compliance with applicable codes respecting fire prevention, fire protection, and building construction.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Paragraph (7) of rule 0780-2-3-.05 Approval of Plans is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (7) Any temporary factory manufactured structure which is not designed and constructed in accordance with the Tennessee Modular Building Act (T.C.A. §§ 68-120-301 et seq. and chapter 0780-2-13) shall have an independent third party inspection label permanently affixed to the unit. For purposes of this paragraph, temporary means placed on a site for less than twelve (12) months.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

Rule 0780-2-3-.05 Approval of Plans is amended by adding new paragraph (8) so that, as amended, the new paragraph shall read:

- (8) Any factory manufactured structure which has been designed and constructed in accordance with the Tennessee Modular Building Act (T.C.A. §§ 68-120-301 et seq and chapter 0780-2-13) shall be exempt from all provisions of this Chapter.

New Rules
Table of Contents

0780-2-3-.11 Dispute Resolution

0780-2-3-.12 Grandfather Provision for Review of Plans

0780-2-3-.11 Dispute Resolution.

- (1) Disputes that arise during the plans review process shall be resolved as follows:
 - (a) When a dispute as to the interpretation or applicability of a code provision arises between the owner or designer of a project and the plans reviewer, the dispute shall be submitted to the Plans Review Supervisor for resolution.
 - (b) If the owner or designer disagrees with the decision of the Plans Review Supervisor, the dispute shall be submitted to the Director of Codes Enforcement for resolution.
 - (c) If the owner or designer disagrees with the decision of the Director of Codes Enforcement, the dispute shall be submitted to the Assistant Commissioner for Fire Prevention for resolution.
 - (d) If the owner or designer disagrees with the decision of the Assistant Commissioner for Fire Prevention, the dispute shall be submitted to the Commissioner of Commerce and Insurance or the Commissioner's designee for resolution.
 - (e) At any point during this process, the parties may agree to submit the dispute to the publisher of the code section at issue for an opinion.
- (2) Disputes that arise during the inspection process shall be resolved as follows:
 - (a) When a dispute arises as to the interpretation or applicability of a code provision between the owner, designer or contractor on a project and the Deputy State Fire Marshal inspecting the project, and the project is being constructed in accordance with plans and specifications approved by the Division, the Deputy State Fire Marshal shall consult with the Plans Reviewer who approved the plans and specifications for resolution. If the owner, designer or contractor disagrees with the decision of the Plans Reviewer, the dispute shall be submitted to the Chief Deputy State Fire Marshal.
 - (b) If the owner, designer or contractor disagrees with the decision of the Chief Deputy State Fire Marshal, the dispute shall be submitted to the Director of Codes Enforcement for resolution.

- (c) If the owner, designer or contractor disagrees with the decision of the Director of Codes Enforcement, the dispute shall be submitted to the Assistant Commissioner for Fire Prevention for resolution.
 - (d) If the owner, designer or contractor disagrees with the decision of the Assistant Commissioner for Fire Prevention, the dispute shall be submitted to the Commissioner of Commerce and Insurance or the Commissioner's designee for resolution.
 - (e) At any point during this process, the parties may agree to submit the dispute to the publisher of the code section at issue for an opinion.
- (3) The entire dispute resolution process set forth in paragraphs (1) and (2) above shall be completed as quickly as possible, but no more than thirty (30) calendar days from the date that the dispute is first submitted for resolution, unless the dispute is submitted to the code publisher for an opinion.
 - (4) If there are any fees charges by the code publisher for rendering its opinion, those fees shall be paid by the owner of the project before final approval of the subject plans and specifications will be issued by the Division.
 - (5) Any appeal of the dispute beyond the Commissioner of Commerce and Insurance shall be submitted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled at T.C.A. § 4-5-301 et seq., pertaining to Contested Case Hearings.


Authority: T. C. A. §§ 68-102-113 and 68-120-101.

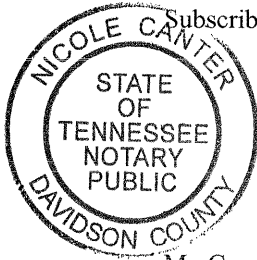
0780-2-3-.12 Grandfather Provision for Review of Plans.

At the submitter's request, plans submitted within one hundred twenty (120) days after the effective date of newly adopted building, fire and life safety codes may be reviewed under the codes that were in effect on the day immediately effective date of the newly adopted codes.

Authority: T. C. A. §§ 68-102-113 and 68-120-101.

I certify that this is an accurate and complete representation of the intent and scope of the rulemaking proposed by the Commissioner of Commerce and Insurance.


Patrick W. Merkel
Chief Counsel for Fire Prevention and Law Enforcement
Tennessee Department of Commerce and Insurance



Subscribed and sworn to before me this 23 day of May, 2008.

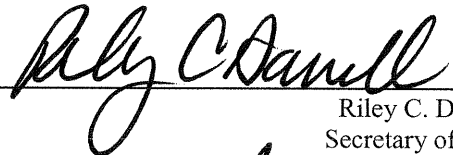
My Commission
Expires
September 25, 2010



Notary Public

My Commission expires on the _____ day of _____, _____.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 30 day of May, 2008.


Riley C. Darnell
Secretary of State

By: 

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